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No. 92-304

IN THE

Supreme Court of the United States

October Term, 1992

NEW YORK STATE SCHOOL BOARDS ASSOCIATION,

Petitioner,

against

THOMAS SOBOL, Commissioner of Education; the NEW YORK STATE BOARD OF REGENTS; and the NEW YORK STATE EDUCATION DEPARTMENT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

Opposition to Motion of National School Boards Association to Appear as *Amicus Curiae* in Support of Petition for Writ of Certiorari

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The motion of the National School Boards Association to appear as *amicus curiae* should be denied.

In July, 1992 the National School Boards Association (NSBA) sought respondents' consent to a motion to appear as *amicus curiae* in support of the petition for a writ of certiorari. Because NSBA was unwilling to share the con-

tent of its proposed brief, respondents refused consent. NSBA nonetheless seeks leave to file its brief—a request which, in light of respondents' refusal to consent, is not favored by the Court. Sup. Ct. R. 37.2.

NSBA's proposed brief, in any event, does not provide the Court with any new, relevant matter. Sup. Ct. R. 37.1. Indeed, the proposed brief burdens the Court by raising entirely speculative issues. NSBA attempts to argue that a decision on the merits of this case would affect other States. As NSBA admits, however, the regulations under review are the only ones of their kind in the United States. They are unique to the State of New York. Like petitioner, moreover, NSBA ignores the fact that the sole issue before this Court would be the *facial* constitutionality of the regulations. It is speculative, first, to assume that other States will adopt **similar** regulations. Were that to occur, further, a decision on the merits of this case would be relevant to other States only if they adopted regulations **identical** to those herein. The Court simply has no basis for concluding that other States will adopt similar or (even less likely) identical regulations.

Respondents respectfully suggest that, at the very least, the Court should postpone review of the issues herein until it has had an opportunity to determine if other States will, in fact, follow New York's lead. The "urgency" for review that NSBA perceives simply reflects NSBA's misunderstanding of the regulations. There is no evidence (nor could there be, on this facial challenge) that the participation of religious representatives on AIDS advisory councils somehow "damages" the public school AIDS curriculum. To the contrary, as upheld by the Court of Appeals, the regulations

currently in place ensure that, by reducing "opt outs," more students receive accurate AIDS education.

NSBA presents the Court with statistics and speculative arguments utterly unrelated to the facial constitutionality of New York's regulations. The few arguments that do address facial constitutionality have already been advanced by petitioner. Respondents respectfully request, therefore, that NSBA's motion to appear as *amicus curiae* be denied.

Dated: Albany, New York
September 3, 1992

Respectfully submitted,

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